Executive Secretary

August 18, 2012

National Labor Relations Board

1099 14th Street NW

Washington DC 20570-0001

Mr. Secretary,

Pursuant to 102.67 of the NLRB Rules and regulations, the NLJSP (Petitioner/Appellant) requests an expedited review and offers a prayer for an Order for an immediate directed election in a remand to Region Five in case 05-RC-86674 *The Whitestone Group*.

The Petitioner/Appellant believes there is a substantial question of law or policy inherent in the practice of the RD of Region Five in disregarding UGL-UNICCO and overt evidence of the defunct status of the Incumbent UNION as evidenced by the criminal arrest of it's sole executive. the failure of the Incumbent Union to provide the required annual reports to the OLMS and the de facto abandonment of it's CBA and the concept of just cause as enshrined in it's un-ratified CBA. The Petitioner/Appellant holds that the nature of the Employer's business as a Contract Security Provider whose contract to provide services using the petitioned for unit was cancelled and has since been reissued to a competitor is absolutely germane to the question of timeliness and the open or insulated period of the bargaining unit in a representation election. The Petitioner/Appellant believes these are issues that should have been best dealt with at the Representation Hearing scheduled August 14th, 2012 which upon summary and cursory examination by the RD was cancelled upon the dismissal of the petition in the instant case.

The idea that the current CBA is valid until January 31, 2014 has no basis in fact as The Whitestone group will be out of the facility on November 30,2012. The DHS has cancelled the contract they have with the Whitestone group which was signed in 2008 and the Incumbent Union will have no CBA on December 1,2012. This issue was raised with the

RD of Region Five but he seemed to regard the issue as *de minimus* to the matter at the bar. Clearly, now that the Employer will end his relationship on November 30, 2012 there is a compelling reason to believe that the Region Five decision dismissing the instant petition was based on a substantial factual issue that was erroneous. The combination of a cancelled contract, a flawed and un-ratified CBA imposed by an arguably defunct. Union on a bargaining unit blended with other units in an action by the Federal government militates for a re-examination of Board Policy. The fact that the RD of Region Five felt no reason to have these issues examined at Hearing militates for direct action by the Board and an immediate order for an election in the petitioned for unit in a remand to Region Five

This case dismissed on the day (8/14/12) it was scheduled to go to hearing was given only a cursory examination by the RD of Region Five in spite of compelling reasons that militate against the petition being contract-barred per *Hexton*Furniture Company 111 NLRB 342 (1955) as stated in the dismissal letter from Region Five in the instant case.

The Petitioner/Appellant, the National League of Justice and Security Professionals, (NLJSP) maintains as we did in our proffer to Region Five a belief that the RD should have looked to a much more recent ruling of the BOARD particularly UGL-UNICCO where the Board said <u>Second</u>, <u>we modify the "contract bar" doctrine to address a prospect raised in *MV Transportation*: that a challenge to the incumbent union's majority status by employees or by a rival union might be precluded for an unduly long period, should insulated periods based on the successor bar and the contract-bar doctrines run together.</u>

The Petitioner/Appellant (NLJSP) offers several points upon which the Board should ponder and base a clearly well founded reversal of the Regional Director's decision to dismiss without processing the instant case.

The first item being that as alluded to in the proffer on timeliness to Region Five; the Whitestone Group was unlikely to retain the contract with DHS as the 800 K Street was on a DHS mega-solicitation. 800 K Street NW was included as one of four buildings in DHS solicitation

HSHQEC-12-R-00009. That solicitation was awarded to another party(First Coast Security of Jacksonville Fla.) on August 14, 2012, the day the instant petition was dismissed and the day of the scheduled representation Hearing. The Whitestone Group will be out of the building on November 30, 2012 and that will be the last day of the extant CBA. The employees represented by the incumbent will then only be one small part of a community of interest that includes other buildings all represented by different International Unions and employed by one small start-up firm with common supervision.

The second item where Region Five failed to give due deference is the argument the Petitioner/Appellant makes about the defunct status of the Incumbent NASPSO and it's sole employee Caleb Gray-Burriss(CGB). CGB is out on bond on federal felony charges for misusing the pension funds he had a fiduciary responsibility for as a representative of Guards in units that belong to NASPSO. The Board of NASPSO is clearly defunct and operating in the throes of a schism when volunteer Board members who are employed as contract guards meeting strict standards of suitability could be deemed unsuitable and hence unemployable by merely associating with him. Even if that never happened, CGB as the sole employee and sole executive exercises absolute authority over the board and the direction of NASPSO. The fact that NASPSO has filed only three required annual reports with Department of Labor Office of Labor and Management Standards (DOL/OLMS) in this century shows a total breakdown of the administrative apparatus. The Petitioner/Appellant was prepared to provide witness testimony at Hearing that the Incumbent left everything done in the petitioned for unit to two stewards who have since resigned and spearheaded the petition filed in this case for a showing of interest with 90-95 per cent of the of the possible signatures in the affected unit. CGB and NASPSO acquired this unit after his last arrest as outlined in a Department of Justice News release in April 2011. CGB has collected no dues as of the filing of the instant petition and has never sought the ratification of the CBA by the membership of the affected unit. NASPSO has effected a de facto abandoning of interest if not an overt de jure claim of disinterest.

The arrest of CGB for defrauding the pension funds of people he represents is a reasonable disclosure never made to the affected members in the petitioned for unit. The ratification of a CBA by an

affected membership is only a right if found in the Union Constitution or expressly agreed to at the table with the Employer. A hearing would have shown if that had been the intent at the bargaining table. However ratification by an affected unit is clearly the preferred practice when managing collective bargaining agreements.

The NASPSO Constitution as filed in 1993 has no right of ratification by affected units. It is really impossible to determine if a right of ratification was enshrined in later documents because of the routine failure of NASPSO to file required annual reports and serious doubt as to the accuracy of any report filed.

The reports that are filed indicate the NASPSO merged with a larger Union the International Union of Security Police and Fire Professionals in 2003 (SPFPA) and then later restarted itself. The fact that NASPSO roused itself to keep this unit and made no disclaimer of interest is germane. However, that is of less import than CGB and NASPSO's failure to litigate with DOL The Whitestone's failure to pay the proper Health and Welfare monies or to represent with a grievance two stewards discharged and then suspended for approximately two weeks with no just cause. This unwillingness of CGB and NASPSO to defend the CBA and the rights of the affected members has sparked the current revolt and the instant petition in the petitioned for unit.

The third item where the Regional Director failed to give due deference to is to the impact of the actions of the Federal government particularly the Department of Homeland Security(DHS). The actions of DHS in contract solicitation initially and later in the implementation would if they were a private Employer clearly make them subject to the Joint-Employer Doctrine. Contracting agencies of the Federal Government have already been found to be Co-Employers as noted in a law memo dated 6/6/2011 by the Bryan Schwartz Law Firm detailing when the Government "has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer." *Lopez v. Johnson*, 333 F.3d 959, 963 (9th Cir. 2003) (citing *Redd v. Summers*, 232 F.3d 933 (D.C. Cir. 2000) (internal citations omitted)); *Strolberg v. Akal Sec. Co.*, 2005 WL 5629026, at *6 (D. Idaho Jan. 19, 2005). (In *Strolberg v. Akal Sec. Co.*, the

court found employees of Akal Security Co., a private security company, to also be government employees of the United States Marshal Service...).

The RD of Region Five does not understand that the Employer in the instant case is working on a one-year contract with a series of option years providing his services to the DHS which then provides those same services to another agency. The DHS can as they have done in the petitioned for unit terminate the Employer's contract at the beginning of an option year or upon a decision to terminate in the "best interests of the government' during an option year. This leads to a volatile labor situation with bargaining units combined or broken up by a party with no "skin in the game". The DHS takes only such notice of a CBA as it is required by law under 29 CFR chapter 4 which governs compensation standards for Service Contract Act Employees. The Contracting Agency, DHS, takes no other notice of terms and duration of units with collective bargaining agreements. The un-ratified CBA of the incumbent is one of three in the mega-solicitation HSHQEC-12-R-00009. Each CBA has a separate International Union, a separate expiration date, with separate open and insulated periods. It is clearly in the best interests of the affected employees in all three units to combine efforts in a new and expanded community of interest. This can be done best with access to the mechanisms of the Board after the issues of representations are settled. The time available for that is prior to the assumption of the newly expanded unit by the Successor Employer identified August 14, 2012 who assumes duty in the petitioned for unit December 1, 2012.

The incumbent Union (NASPSO) will benefit unfairly from the un-timeliness ruling where the RD failed to give due deference to the Petitioner/Appellants arguments regarding (1) Nature of Employer's business (2) Defunct status of Incumbent and inherent schism of his organization (3) the major restructuring of no less than three unionized bargaining units and a fourth with no union under four separate Employers into one unit under one common Employer with common supervision. The incumbent (NASPSO) with no support in the petitioned for unit will also benefit unfairly from the newly restored Successor Bar barring any petition from December 1, 2012 until December 1, 2013. That is a date that would place the petitioned for unit in the last month of the insulated period of the extant CBA ruled valid by the RD of Region Five. That benefit and the

Successor Bar will give the Incumbent a protection long past the time he has lost majority support and will probably trigger a quick CBA to lock down the unhappy denizens of the petitioned for unit for another three year contract they will not be allowed to vote on.

The Contract Bar rule is a Board construct the purpose of which is to prevent industrial chaos and promote industrial peace and democracy. It is not a bright line rule but best serves as a strong guideline. As such there are cases and valid reasons to depart from it. The best reason for doing so is that representation elections are the best way to allow the majority to identify their preferred 9(a) representative in the petitioned for unit when their Employer is about to change. In the particular field of Service Contract Act employees, there is no period more critical than Contract Changeover. The implementation of the Non-Displacement of Qualified Workers Executive Order EO 13495 signed 1/30/2009 and the impact of the AHCA of 2010 were not in the calculus of the Incumbent (NASPSO) during Whitestone negotiations. These crucial items will clearly will be uppermost in the minds of the members of the petitioned for unit in the next negotiations. EO 13495 guarantees continued employment with the Successor Employer and the impact of AHCA works against the retention of Health and Welfare Benefits as a cash option, eliminating 12-15 per cent of the current gross pay of employees in the petitioned for unit. These are weighty issues best negotiated by a representative with a clear majority.

The nature and facts of this case (1) Government Action that has changed the bargaining unit by merging three clear communities of interest (2) an indicted defendant in a defunct labor organization posing as a labor leader hiding behind an un-ratified CBA with no majority support and (3) an Employer that has no interest in the petitioned for unit after December 1, 2012 urge a departure from Hexton Furniture Co. 111 NLRB 342 (1955). The Petitioner/Appellant urges the standards of UGL-UNICCO and restates *inter alia* an earlier argument made in our proffer to Region Five.

The actions of the DHS have made a contract bar to an RC election against the best interests of the members of the petitioned for unit and repugnant to the concepts of union democracy and industrial peace. It is clear to the Petitioner/Appellant and we hope to the Board that if government action can because of National Security bar an election as in Aerojet-General Corp. 144 NLRB 42 (1963). Then it can as the result of

Homeland Security foster an election in the instant case. The action of the DHS in the instant case (1) cancelling the Whitestone group contract and (2) blending the community of interest in three separate certified bargaining units merits lifting any contract bar in the instant case.

The Petitioner/Appellant prays for an expedited Review and an order directing the Regional Director to conduct an immediate election in the instant case.

Ronald A. Mikell for the Petitioner/Appellant

National League of Justice and Security Professionals

(8) Copies to

Office of the Executive Secretary

Franklin Court Building

National Labor Relations Board

1099 14th Street NW

Washington DC 20570

The Whitestone Group Mr. John D. Clark, President 800 K Street Washington DC 20001

National Association of Special Police and Security Officers 10 "G" Street NE Suite 710 Washington DC 20002

Wayne Gold, RD Region 5 NLRB 100 S Charles Street STE 600 Baltimore MD 21201

| I do swear I have served by regular mail copies of this request for review on all parties at interest save only the Executive |
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| Secretary of the NLRB where the required copies were served personally by hand on that Office. Ronald A Mikell affiant Dare Aug 20, 20, 20, 20, 20, 20, 20, 20, 20, 20, |
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